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MEMORANDUM FOR [REDACTED]

Assistant to the DDCI

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FROM [REDACTED]

Associate General Counsel

SUBJECT : DCI Briefing of NFIB on the Intelligence Community Structure

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1. In your memorandum of 1 March, subject as above, you advised of the intention for a DCI briefing of NFIB on 14 March to outline the organizational decisions made at the [REDACTED] conference of 17 and 18 February, and, I assume, as amplified by the meeting with the Deputy Director last week. You raise certain questions with respect to warrantless search, as to which we will reply separately. Additionally, you inquired as to "the legality of the delegation of the Director's authority over the NFIB Committees to the respective Deputy for Collection Tasking and NFAC." You also invited our comments on the paper in general. The problems and issues involved in your memorandum and attachment lead to still other questions and considerations, as our comments below indicate.

2. The basic law in this area is Executive Order 12036 and the ultimate charters for the two Deputies. Neither Deputy position is created by the Executive Order, nor is the Deputy for Resource Management. The Order does establish NITC and assign responsibilities to it, all of which are of a Community nature. Under section 1-502 the functions of NITC are as follows:

Responsibilities. The NITC shall be the central mechanism by which the Director of Central Intelligence:

(a) Translates national foreign intelligence requirements and priorities developed by the PRC into specific collection objectives and targets for the Intelligence Community;

(b) Assigns targets and objectives to national foreign intelligence collection organizations and systems;

(c) Ensures the timely dissemination and exploitation of data for national foreign intelligence purposes gathered by national foreign

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intelligence collection means, and ensures the resulting intelligence flow is routed immediately to relevant components and commands;

(d) Provides advisory tasking concerning collection of national foreign intelligence to departments and agencies having information collection capabilities or intelligence assets that are not a part of the National Foreign Intelligence Program. Particular emphasis shall be placed on increasing the contribution of departments or agencies to the collection of information through overt means.

It would follow that any of the committees whose functions are encompassed within the NITC responsibilities prescribed by section 1-502 may be assigned to NITC and indeed may not be assigned to anyone else. And if, as I understand, it is intended that the Deputy for Collection Tasking is to head NITC, and perform other functions as well, any 1-501 functions and the committees that perform them, would have to be included in [ ] NITC charter, and not any other charter he may have or may be given.

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3. NFIB also is established by the Executive Order (section 1-401), composed of representatives of specified Community agencies, to advise the Director concerning a number of Community activities and other matters referred to it by the DCI. Specifically:

Establishment and Duties: There is established a National Foreign Intelligence Board (NFIB) to advise the Director of Central Intelligence concerning:

- (a) Production, review, and coordination of national foreign intelligence;
- (b) The National Foreign Intelligence Program budget;
- (c) Interagency exchanges of foreign intelligence information;
- (d) Arrangements with foreign governments on intelligence matters;
- (e) The protection of intelligence sources and methods;
- (f) Activities of common concern; and
- (g) Other matters referred to it by the Director of Central Intelligence.

The Order establishes no NFIB committees and I am not aware that subsequent to the issuance of the Order (26 January) NFIB has established any. Moreover the committees which existed before Executive Order 12036 were not NFIB committees. (DCID 1/8 (6 May 1976) established an NFIB and also provided that continuing "support for the Board shall be provided by standing Director of Central Intelligence committees established to deal with the various functions and categories of intelligence." Consistent with that authority, the various committees were established, by DCIDs, as standing committees of the Director of Central Intelligence.) Thus technically there are no NFIB committees to be placed under the authority of one of the Deputies. What is needed to clarify the situation is to establish such new committees as may be desired, which could take the form of DCI committees or as NFIB committees, as the Director may choose, and to prescribe their charters. Further, in view of the establishment of NFIB by the Executive Order it would be in order to promptly rescind DCID 1/8. Additionally, the various DCIDs which established the other committees should be replaced by other directives or charters establishing the committees now desired deriving from the Executive Order.

4. The Order establishes NFIB, prescribes its functions and provides that NFIB "shall be chaired by the Director of Central Intelligence" and includes "other appropriate officers of the CIA, the Office of the Director of Central Intelligence" and other Community agencies. Although, there is no specific provision for anyone to serve as chairman in the Director's absence, it seems clear that the Deputy Director, by virtue of his position, as well as by the pending delegation of authority, is authorized to chair that body. It seems doubtful that the Order intends that any official other than the Director and Deputy Director may chair NFIB on a regular basis. There would be no legal objection to assigning to the Deputy for NFAC responsibility with respect to any NFIB Committees, although some of the areas of advice authorized to NFIB, e.g., section 1-401(b), would appear appropriate to other officials. And if it is decided to constitute DCI, rather than NFIB, Committees, as at present, the Executive Order would not preclude their assignment to the Deputy for NFAC. It is to be noted in any event that NFIB has no command authority. Its only duty is to advise.

5. These problems suggest several points for further consideration.

a. It is not clear that all the DCI's Community responsibilities under the Order have been allocated. (Sections 1-4, 1-5, and 1-6 assign numerous functions to the DCI, in addition to his duties under 1-8, as head of CIA.) By addressing systematically each of those functions and allocating them, rather than approaching the problem from the point of view of where to assign existing committees, we could, with more certainty, assign all responsibilities and adjust committees and staffs to meet them.

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The existing NSCIDs suggest an urgent need to develop written charters for the functions of the several Deputies, flowing essentially from the Executive Order.

c. The existing NSCIDs and DCIDs need to be studied with the view of revising, amending, revoking, etc., as appropriate, under the new Order. They are difficult problems of course. NSCIDs traditionally have been drafted by the Director and the Agency and approved by the NSC (or perhaps only by the Assistant to the President for National Security Affairs). The DCIDs are both drafted and approved by the Director and his staffs and components and he can change these quickly. Some are obsolete, as mentioned. Some DCIDs in any event are dependent in part on the NSCIDs.

6. In a real sense the items in paragraph 5 should be addressed in reverse order. NSCIDs should be issued first, as well as any DCIDs which do not depend on authorities and duties flowing from NSCIDs, followed by DCIDs to implement the NSCIDs. Then the Deputies' charters should be drafted and issued. As a practical matter, this may not be possible. If any inconsistencies result from after-issued NSCIDs, any necessary modification of subordinate directives or regulations should not be difficult.

7. This Office of course is available to assist.

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